

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DONALD GABRIEL,

Plaintiff,

v.

**OLD LINE BANCSHARES INC., JAMES
W. CORNELSEN, CRAIG E. CLARK,
GREGORY STEPHEN PROCTOR JR.,
ROSIE ALLEN-HERRING, STEPHEN
K. BREEDEN, JAMES R. CLIFFORD
SR., STEPHEN J. DEADRICK, JAMES
F. DENT, ANDRE J. GINGLES,
THOMAS H. GRAHAM, GAIL D.
MANUEL, JEFFREY A. RIVEST,
SUHAS R. SHAH, and JOHN M. SUIT II,**

Defendants.

Case No. 1:19-cv-09095- RA

JURY TRIAL DEMANDED

DEFENDANTS' MOTION TO DISMISS

Defendants Old Line Bancshares Inc. ("Old Line"), James W. Cornelsen, Craig E. Clark, Gregory Stephen Proctor Jr., Rosie Allen-Herring, Steven K. Breeden, James R. Clifford Sr., Stephen J. Deadrick, James F. Dent, Andre J. Gingles, Thomas H. Graham, Gail D. Manuel, Jeffrey A. Rivest, Suhas R. Shah, and John M. Suit (collectively, "the Individual Defendants", and together with Old Line, "Defendants"), by and through their undersigned counsel, respectfully move this Court to dismiss Plaintiff's Complaint pursuant to Rules 12(b)(3) and 12(b)(6) of the Federal Rules of Civil Procedure for improper venue and failure to state a claim upon which relief can be granted.

As more fully set forth in the supporting memorandum, which is attached hereto and incorporated herein by reference, the Complaint was improperly filed in this District absent any

allegation connecting Defendants or the events giving rise to this action to this venue, aside from the single allegation that Defendant Old Line's stock trades on the Nasdaq. Moreover, the Complaint fails to plausibly allege any material omissions from the Proxy Statement for the proposed merger between Old Line and Wesbanco, Inc. or loss causation as is required to state an actionable claim under Rule 14a-9, 17 C.F.R. § 240-15a-9, promulgated under the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, *et seq.* The Complaint further fails to plead any "control" by or "culpability" on behalf of the Individual Defendants which could give rise to a plausible claim under Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t.

The Proxy Statement is appended hereto as Exhibit A.

WHEREFORE, Defendants respectfully request that Plaintiff's Complaint be dismissed with prejudice and that they be granted such other and further relief as the cause may require.

Dated: October 29, 2019

/s/ Matthew S. Mulqueen

Matthew S. Mulqueen (NY Bar No. 4763386)

R. Mark Glover (*pro hac vice* to be filed)

Kristine L. Roberts (*pro hac vice* to be filed)

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